No. 13,562

IN THE

United States Court of Appeals

For the Ninth Circuit

UNITED STATES OF AMERICA,
Appellant,

vs.

FRANK LUEHR, and JONES STEVEDORING COMPANY, a corporation,
Appellees.

On Appeal from the United States District Court for the Northern District of California, Southern Division.

REPLY BRIEF OF THE UNITED STATES.

LLOYD H. BURKE,
United States Attorney,
KEITH R. FERGUSON,
Special Assistant to the Attorney General.
J. STEWART HARRISON,
Attorney, Department of Justice,
447-A Post Office Building, San Francisco 1, California,
Attorneys for Appellant.

PERNAU-WALSH PRINTING CO., SAN FRANCISCO

Subject Index

Table of Authorities Cited

Cases

Codes

Texts

No. 13,562

IN THE

United States Court of Appeals

For the Ninth Circuit

UNITED STATES OF AMERICA,
Appellant,

vs.

FRANK LUEHR, and JONES STEVEDORING COMPANY, a corporation,
Appellees.

On Appeal from the United States District Court for the Northern District of California, Southern Division.

REPLY BRIEF OF THE UNITED STATES.

In reply to the separate briefs filed by appellee Jones Stevedoring Company and appellee Luehr, the points raised by Jones Stevedoring Company will be discussed first followed by discussion of the points raised by appellee Luehr.

THE GOVERNMENT'S CONTRACTUAL RIGHT OF INDEMNITY FLOWS FROM THE NEGLIGENCE OF LUEHR AND OTHER EMPLOYEES OF JONES STEVEDORING COMPANY.

The undisputed testimony shows that Luehr placed himself beneath a suspended load in violation of the

Safety Code. According to the uncontradicted testimony the employees of Jones Stevedoring Company permitted Luehr to thus violate the Safety Code and failed, when the opportunity was present, to warn him of the danger and order him out from beneath the plane prior to the time they knew the whistle signal was to be given for moving the suspended load. These acts of negligence are glaringly apparent in the light of the admitted fact that Luehr was the only man injured out of the whole stevedoring gang who were assisting in steadying the plane. He was the only man who went beneath the suspended plane. The other members of the gang performed the same job of steadying the plane by merely placing their hands on the wings.

It is uncontested that, under the terms of the contract between Jones Stevedoring Company and the Government, negligence on the part of Luehr, or any one of the employees of Jones, requires Jones Stevedoring Company to hold the Government harmless. There is no suggestion that any other interpretation of the contract is possible.

IT WAS NOT NECESSARY FOR LUEHR TO BE UNDER THE SUSPENDED LOAD, IN THE POSITION THAT HE WAS AT THE TIME OF HIS INJURY.

Counsel for appellee Jones Stevedoring Company contend that it was *necessary* for Luehr to be under the airplane to do his job.

Necessity implies a reason. No reason is suggested.

The testimony is clear that the only job Luehr was attempting to do was the job of steadying the plane from swinging. He testified that this was so, as follows (R. 357):

"Q. I interpret your testimony to be, you were up there to steady the airplane?

A. That is right.

Q. Did you have the platform with you that was going to go underneath the wheel?

A. The platform already was underneath there.

Q. Did you have the bolts with you that they needed in fastening the landing gear to the platform?

A. No, sir.

Q. *Were you going to fasten it?*

A. *No, sir.*

Q. *You were there to steady it, is that right?*

A. *That is right.*"

The testimony and the physical facts prove that the plane could be steadied by standing away and taking hold of the wings. The other stevedores who were also steadying this same airplane were doing so by placing their hands on the wings. (R. 355.)

Mr. Luehr himself testified that he himself had previously done the job of steadying other airplanes by merely placing his hands on the end of the wing. He testified (R. 355):

"Q. I see. Then each time a plane was landed, would some of the men take hold of the end of the wing as you say?

A. That is right.

Q. And you had done it on prior occasions?
A. Oh, yes."

The only time it was necessary to go underneath the airplane was when it was spotted directly over the platform. At this time the tripod had to be placed squarely on the platform and the bolts affixed. At this time there was practically no danger of injury if the plane fell, for it would only fall a few inches, and would then rest upon the platform with the wings and the body supported by the landing gear.

Counsel for Jones have attempted to cite to the Court testimony to the effect that it was necessary to go under the plane, and thereby excuse the negligence. All of this testimony relates to a time when the plane *was spotted* over the platform. The testimony is unanimous to the effect that *there is no necessity* for being underneath the plane before it is spotted over the platform.

All of the testimony of Mr. Spirz which they have quoted in their brief in connection with this point refers to a time when the plane was spotted over the platform. With regard to the precise time of the injury, Mr. Spirz testified:

> "Now, because we have to move the plane over the foot or so, nobody was getting underneath to move the platform or the movable beams." (R. 191.)

Every expert called testified that there was no necessity of being under the airplane until the landing gear was spotted over the platform. On pages 20 and

21 of the Government's opening brief the testimony of these experts is excerpted for the convenience of the Court.

In addition to the testimony quoted in the opening brief, there is the testimony of another expert called on behalf of Jones Stevedoring Company which was as follows (R. 637):

> "Q. Mr. Moore, is it necessary to grab hold of this strut before the landing gear of the plane arrives at a spot directly over the platform?
>
> A. Well, all the planes I have worked on, when these fellows brought it over to us, *always directly over before we got hold of it.*"

Since these experts were called by appellee Jones they are bound by this testimony. (32 *C.J.S.*, page 1104.)

It is to be noted that appellee Jones chose to ignore the testimony of their own experts in presenting their brief to the Court.

The only support that could be found for the contention that it was necessary to go under the plane prior to the time the landing gear was spotted was the testimony of a young lawyer, Timothy O'Brien, who claimed to have had some familiarity with these airplane loading procedures some ten years ago. Even this testimony which appellee apparently deems to be helpful makes it clear that there was no necessity to go under the plane to steady it, for, as quoted on page 18 of appellee's brief, Mr. O'Brien testified:

> "There were two reasons you had to go under, one was to line it up so they are square on the

platform, and secondly, the tripods weren't perfectly balanced, so that if you didn't exactly set them in line as you dropped it onto the deck, the natural result it would come up with a little angle one way or another."

Nowhere in this original statement did he say it was necessary to go under the plane to steady it.

It is to be noted that the man who was Mr. O'Brien's superior at the time he was engaged in this type of work was Mr. Nystrom. (R. 671.)

Mr. Nystrom testified as follows (R. 524):

"Q. But to be—to make it clear, to the best of your knowledge, it is not necessary for a man to go under there to do anything with the tripods until it arrives over that platform, is that right?
A. Yes."

It is contended by counsel for Jones that at the time Luehr went underneath the airplane, it had to be moved only a "little bit". The testimony is clear that it was two to three feet away from the spot directly above the platform, and that it had to be swung inboard and aft to reach the spot above the platforms.

The fact is, the reason the derrick barge is used is that it is a precision instrument capable of spotting these planes with great accuracy. It is used because it has precision which the ship's own gear does not. (R. 232-233.)

The testimony also showed that in still waters such as where the SHAWNEE TRAIL was docked it is customary to lower the plane to within a foot to three or

four inches of the platform before the men go underneath to attach the tripods. Mr. Holbrook, one of the experts called by appellee Jones, indicated that in a sheltered harbor or cove they would lower it to within three inches. (R. 629.)

Mr. Davis, the safety expert who aided in promulgating the Pacific Coast Marine Safety Code, and a witness called by appellee Jones testified that the Safety Code requires, *"That the men stand clear until the whistleman has landed or spotted that load as near as possible over the point where he intends to land it permanently."* (R. 693.)

It is abundantly clear that the load was not spotted over its permanent resting place and it still had to be moved several feet so that the landing gear would be over the platform.

Consequently, by the testimony of the stevedores' own safety expert, Luehr was under the load in violation of the Safety Code.

From the foregoing it is clear that there is no necessity of being under the airplane to steady it, or for any other reason, prior to the time it is spotted directly above the platform. From the facts it is clear that the airplane had not arrived over the platform at the time Mr. Luehr went underneath, hence his going underneath was unnecessary.

IT WAS NOT PROPER FOR LUEHR TO BE UNDER THE AIRPLANE AT THE TIME OF HIS INJURY.

Counsel for appellee Jones state that Mr. Luehr's position was necessary and *proper*. The foregoing section shows it was not necessary. *It was also improper.*

With regard to negligence, for an act to be proper, it must be an act which does not fall below the standard of care to which the actor must conform for his own protection. The Stevedoring Unions have not let this standard of care remain a matter for idle speculation; they have promulgated a set of rules which by its own terms sets up the minimum requirements for safety of life or limb. (Rule 102, Pacific Coast Marine Safety Code, Government's Exhibit A.)

Counsel for appellee attempt to persuade the Court that because the rule prohibiting men from going under suspended loads uses the term "sling load" it does not apply to other types of suspended loads. One witness is quoted as having stated the rule did not apply in this case because the load in this case would be defined as a "lift load". (R. 669.)

This absurd distinction was not recognized by the stevedore boss who testified as to his interpretation of the code—"It says a man shall not stand under a load." (R. 164.)

The obvious intention of the rule is to prohibit men from standing beneath suspended loads in order to avoid injury should the load be dropped.

By this thinly veiled evasion, counsel would have us believe that the stevedores' own Safety Code does

not apply in any case involving a "lift." Should a steamship owner attempt to make stevedores work under a suspended "lift load" by saying that their safety rule applies only to "sling loads," the Court can be assured the cargo would not be loaded. The stevedores themselves would scoff at such a proposition the same as this Court will certainly do.

It is therefore apparent that Luehr's being under a suspended load is a violation of the stevedores' own Safety Code. Certainly it is conduct falling below the standard of care required for safety of life and limb, and hence *improper.*

Not only was it negligent conduct on the part of Luehr himself, but there was also negligence on the part of the stevedore foreman for failing to warn Luehr to remove himself; especially in view of the fact that the foreman knew that the plane was about to be moved. As the Court stated in *Barbarino v. Stanhope S. S. Co.* (C.A. 2d 1945), 151 F. (2d) 553, cited in the Government's opening brief: "It was possible to avoid all danger at that time by merely warning men to get out of the way. * * * Considering that if it did fall, the man would be most gravely injured or killed, we cannot excuse the failure to protect them by so simple a means."

THE DISTRICT COURT'S FINDING THAT LUEHR WAS IN A NECESSARY AND PROPER PLACE WAS NOT A FINDING OF FACT BASED UPON A CONFLICT IN THE TESTIMONY, BUT WAS ERRONEOUS IN THAT THERE WAS NO TESTIMONY IN SUPPORT THEREOF.

The Court of Appeals should reverse where there is no evidence to support a material finding of fact. As the Court of Appeals in the Fourth Circuit stated in the *Columbia L. C.,* 26 F. (2d) 583, 1928 AMC 1211, at page 1214:

> "Where the trial judge is clearly wrong in his conclusion of fact, and where there is no evidence to support the same, it is the duty of the Appellate Court to reverse that finding."

Counsel for appellee have cited several cases in support of the contention that violation of a company rule is not negligence *per se,* but the question of standard of care is a factual one for the jury to determine. In citing these cases, counsel has chosen to ignore the fact that this case was not decided by a jury. The distinction between jury cases and court cases with regard to findings relative to the standard of care was pointed out by the Court of Appeals for the Second Circuit in *Barbarino v. Stanhope S. S. Co.* (supra). The quotation from the Government's opening brief is repeated for the convenience of the Court:

> "It is true that in a jury trial the standard of care demanded in any given situation is regarded as a question of fact, and the verdict is conclusive upon it as it is upon any other question. For the jury is deemed—rightly or wrongly —to be as well qualified to set such a standard as a judge. But where the decision is that of a

> judge, we distinguish between such findings and true findings of fact; and the conclusion is as freely reviewable as any 'conclusion of law,' strictly so called." (Citing cases.)

It is obvious, therefore, that the cases cited by counsel for appellee are not applicable to the situation before this Court.

With regard to the negligence of Mr. Spirz, the foreman on the job, and an employee of Jones, there was little or no dispute about the three following facts:

(1) He failed to give any instructions to his men with regard to the loading of these airplanes, despite the fact that Luehr had never worked on a mechano deck, doing an operation of this kind, before undertaking the loading of this particular ship. (R. 320.) Such instruction is specifically required by the Pacific Coast Marine Safety Code, Rule 206(c). (Government's Exhibit A.)

(2) Although he knew Luehr was underneath the wing of the airplane, because he saw him there (R. 182), he failed to warn him to get out from under at the time the signal was given to move the plane.

(3) By his testimony it is shown that he not only failed to warn, but that he in fact condoned an obvious violation of the Safety Code (R. 183) which it is his duty to enforce. (Government's Exhibit A, Rule 206.)

The question that remained for the District Court was to determine whether or not these facts conformed to the standard of care required of stevedores for the protection of their men. The answer is obviously a conclusion of law which is clearly subject to review by this Honorable Court.

FAILURE TO CALL THE WHISTLEMAN OR A WITNESS RAISES NO PRESUMPTION AGAINST THE GOVERNMENT.

Counsel for appellee Jones have contended that the Government's failure to call the derrick barge "whistleman" raises a presumption that his testimony would have been unfavorable. In this connection, two things are respectfully called to the attention of the Court. First, there is no allegation, nor is there any contention that there was anything wrong with the whistle signals, or that anything this man did, or did not do, in any way contributed to the accident; therefore he could not be termed a material witness. He was merely another observer, insofar as the accident is concerned, and therefore his testimony would have been merely cumulative.

The absent witness rule was discussed by the Court of Appeals for the Fourth Circuit in the *Oregon—New Mexico,* 175 F. (2d) 632, 1949 AMC 1120, at page 1126, as follows:

> "Counsel for libellants lay great stress on the failure of the United States to call as witnesses certain specifically named persons: Lieutenant Gentry and quartermaster's striker Hoover of the

> NEW MEXICO and Lieutenant Moyer of the HUGHES. The District Court recognizing the general principle that 'when a litigant fails to offer witnesses who are available a court may draw the inference that their testimony would not be helpful,' went on to hold: 'But when there are a dozen witnesses to an event and two of them are not called to testify, I know of no authority which compels a court to discredit entirely the testimony of the other ten.' We must sustain that ruling under the circumstances of this case."

Secondly, it is to be noted that counsel for appellee Luehr called this man as their own witness at the time of taking his deposition. When the District Court ruled the deposition was not admissible, since there was no showing that the witness was absent from the jurisdiction, counsel for appellee Luehr was instructed by the Court, "Since he is available, produce him." (R. 282.) Thereafter, counsel for the Government volunteered to aid Mr. Resner (counsel for Luehr) in locating the witness. Counsel for the Government assumed Mr. Resner would follow the instructions of the District Court. The witness was offered to appellees and they failed to call him. If there be a presumption at all, it should be against appellee Luehr.

THE AUTHORITIES CITED BY THE GOVERNMENT'S OPENING BRIEF ARE DIRECTLY IN POINT.

Counsel for appellee Luehr stated that all the Government's authorities are distinguishable on the facts. It is submitted the authorities cited clearly establish the following points:

(1) There can be more than one proximate cause of an injury.

(2) That where there is a safe way to do a job and a dangerous way, it is negligence to employ the dangerous way.

It is obvious from the facts of this case that there was a safe way to steady the airplane, i.e., by placing hands upon the wings and standing clear of the suspended load.

Other men were doing the job safely at the time the plane fell and were not injured. In fact, the only man in the stevedore gang who was injured was Luehr, and that was by reason of the fact that he was the only one under the plane.

The expert testimony was conclusive that the way to do the job was by holding onto the wings.

Luehr himself testified that that was the way he had done it on previous occasions.

There was also a dangerous way to steady the plane. This was to go under the plane and grab the landing strut. It was conclusively shown there was no necessity of doing this to steady the plane.

Luehr chose the dangerous way. Such a choice constituted negligence. 65 *C.J.S.*, Section 122, and cases cited thereunder.)

The fact is uncontested, that under the terms of the contract between Jones Stevedoring Company and the Government, negligence on the part of Luehr, or any one of the employees of Jones, requires Jones Stevedoring Company to hold the Government harmless by way of indemnity.

Such negligence has been clearly proven and consequently it is respectfully submitted that the decree dismissing Jones Stevedoring Company should be reversed and the United States be granted full indemnity from appellee, Jones Stevedoring Company.

REPLY TO BRIEF OF APPELLEE LUEHR.

Because the brief on behalf of appellee Luehr is primarily designed to appeal to the sympathies of the Court, there is little need for a reply. No one contends that Mr. Luehr is not deserving of every sympathy nor that he did not suffer severe and painful injuries.

No attempt was made to "deprecate" or "minimize" Luehr's injuries as implied by his counsel. This is shown by the very fact that counsel for the Government presented to the District Court findings identical with those presented by Luehr's counsel in this regard. It is emphasized by the fact that the entire list of injuries is set out in the Government's opening brief, without omission or diminuation. The fact is there was a substantial physical recovery. The

prognosis was good, and the permanent disability was not total.

In what perhaps may be termed an overabundance of caution, the following brief observations are made.

APPELLEE LUEHR WAS NOT FREE OF NEGLIGENCE.

The question of the negligence of Luehr and his employer, Jones Stevedoring Company, has been thoroughly covered in the Government's opening brief and in the foregoing portion of this brief in reply to the brief of appellee Jones.

Only one new thought has been suggested by counsel for Luehr. On page 5 of their brief it is contended that Luehr did not go under the airplane. This contention has never before been raised, is entirely disproven by the physical facts and the testimony. All the witnesses agreed the plane fell straight down. If Luehr wasn't under the load, how did he get hit?

CLARIFICATION OF THE ISSUES.

Counsel for Luehr have cited numerous cases in the opening portion of their brief intended to show there is liability on the Government for the negligence of its employee. There is no contention to the contrary.

The fact is that the Government is entitled to be indemnified for any loss as a result of this liability by virtue of its contract with Jones Stevedoring Company. The contract provides that Jones must indemnify the United States for any loss resulting from personal injury occasioned "either in whole or in part

by the negligence" of Jones, "its officers, agents, or employees". It has been proven that the accident was caused in part by the negligence of employees of Jones, and that Luehr was one of the negligent employees.

The further fact is that the damages resulting from this accident should be reduced by virtue of the contributory negligence on the part of Luehr himself.

THE SUMS ALREADY PAID BY WAY OF COMPENSATION AND MEDICAL EXPENSES MUST BE CREDITED TO ANY AWARD TO THE LIBELANT.

This point was thoroughly covered in the Government's opening brief.

Counsel for Luehr in their brief have quoted at pages 14 and 15 portions of the record in an attempt to mislead this Court into believing that the award of $125,000 did not include special damages for loss of wages and hospital expenses, however they have entirely ignored the District Court's final finding in this regard wherein it is stated:

> "It is true that as a result of the injuries sustained by libelant as found herein, and by virtue of his permanent disability, pain and suffering, *and his general and special damages,* the Court finds that he has suffered and been damaged in the *total sum* of $125,000." (R. 68.) (Emphasis ours.)

It is elementary that since no cross-appeal has been taken, appellee Luehr cannot attack this finding.

Counsel for Luehr virtually concede that the items already paid should be credited to the award under

the authority of *Palardy v. United States* (E.D. Pa.), 102 F. Supp. 534, but seek to escape the result by saying the matter was not properly raised before the District Court.

Examination of the record will show that evidence with regard to the anti-subrogation agreements was taken extensively. (Testimony of Elzey, R. 542-554.) The certificates of insurance containing the provision were introduced into evidence and read into the record. The matter was argued extensively throughout the trial as the record shows, and also in the final arguments. Failure to credit these amounts to the award is cited as error. (R. 78-79.) The evidence is before this Court and the question has been briefed. It is respectfully submitted that the question was properly before the District Court and is properly before this Court.

To fail to credit the amounts paid by way of compensation and medical payments would result in double payment for the same loss. Such double payments are to be avoided. As the Court stated in *McCarthy v. American Eastern Corporation,* 195 F. (2d) 727, "For in Admiralty, as elsewhere in the law, a litigant may not recover compensation for a single claim, more than once."

In the alternative, failure to credit these amounts on the theory that Luehr must repay his employer for the amounts advanced, would be nothing more than condoning a violation of the express terms of the waiver of subrogation agreement wherein Jones has

expressly waived the right to recover these payments when the third party is the United States.

The $10,404.52 should be credited to any award in favor of Luehr. In fact, any amounts subsequently paid by way of compensation and medical expense must be credited to any award.

EXCESSIVENESS OF DAMAGES.

The true facts with regard to Luehr's actual loss of wages, and his anticipated loss of wages are set out in the Government's opening brief. The computations presented by Luehr's counsel are based on pure speculation and unwarranted assumptions. They are computed on a theory that had the injury not occurred, Luehr would have worked and earned more than he had ever earned before for the entire period of his life expectancy. The Courts have uniformly refused to accept this theory as shown by the cases cited in the Government's opening brief.

Counsel for Luehr have argued that the award in this case is not excessive because there have been higher awards in other cases. They cite eight cases of higher awards. They fail to state the age of the plaintiff in those cases, or the earning capacity. These two factors, of course, must govern the reasonableness of the award.

Luehr was 53 years old at the time of his injury. He had 12 years of working expectancy. His highest

yearly earnings prior to the accident were $4,252.07. (R. 286-287.) His average for three years past was approximately $3,400.00 a year.

Compare these facts with the facts, insofar as obtainable, of the cases cited by counsel for Luehr in their brief, pages 43 and 44.

Keiffer v. Blue Seal Chemical Co. (C.C.A. 3), 196 F. (2d) 614, 107 F. Supp. 288.

This case involved a 36-year-old plumber who was totally disabled and grotesquely disfigured. No previous earnings are quoted, but the working expectancy was *29* years, and the permanent disability, by reason of the total disfigurement, was much greater.

Summerville v. Smucker, 113 N.Y.S. (2d) 868 ($100,000.00). No facts as to earnings or working expectancy are reported. The Court stated $195,888 was grossly excessive and reduced to $100.000.00.

Nives v. City of New York, 109 N.Y.S. (2d) 556 ($160.000.00). This case has no facts reported as to age and earning capacity. Counsel for Luehr cite the case in support of $160,000.00 award. The fact is the case was reversed unless the plaintiff consented to reduction to $125,000.00. Counsel failed to mention this fact.

DeVito v. United Airlines, 98 F. Supp. 88 ($160,-000.00). In this case the previous earnings were $9,038.12 a year. The plaintiff was 38 years of age and had a working expectancy of 27 years. The Court commented that earnings of twenty to twenty-five thousand a year were reasonably within the realm of probability.

Florida Power & Light Co. v. Watson (Fla.), 50 So. (2d) 543 ($260,000.00). It is difficult to understand how counsel can cite a lower Court's decision in support of their contention, when the Appellate Court reversed the decision, on the same grounds upon which the Government urges reversal here. In the cited case, the Court of Appeals reversed for a new trial "by determining that the jury's verdict of $260,000 *is so grossly excessive as to shock the judicial conscience*". And yet counsel cite this case in support of a verdict of $260,000.00.

Smith v. Illinois Central R. R., 99 N.E. (2d) 717 ($185,000.00). In this case (reported at 99 N.E. (2d) 717, not 99 N.E. 717, as cited by counsel for Luehr) the plaintiff was only 24 years old with a working expectancy of 31 years. At this young age plaintiff was making $2,860 a year.

Trowbridge v. Simonds Abrasive Co. (C.C.A. 3), 190 F. (2d) 825 ($126,182.44). In this case the age of the plaintiff was 44 years. He had a working expectancy of 21 years. His earnings were not stated in the opinion.

Sunray Oil Corp. v. Allbritton (C.C.A. 5), 187 F. (2d) 475 ($125,000.00). In this case no age was given but the plaintiff had earnings of around $400 a month. His injuries were more severe than Luehr's as shown by the footnote in 88 F. Supp., page 60.

From the above, it is apparent that counsel has indiscriminately cited cases where large figures are mentioned. They have no bearing on the case at bar, other than perhaps to show how frequently Courts of Appeal have found it necessary to reduce jury awards.

The court will note the impropriety of the references made by Luehr's counsel to matters outside the record. Objection to their consideration is hereby made. They are obviously improper and no further comment is deemed necessary.

CONCLUSION.

It is respectfully submitted:

(1) That the award to appellee Luehr must be reduced by reason of his contributory negligence.

(2) That the award is grossly excessive in light of appellee Luehr's average earnings and his working expectancy.

(3) That the amounts paid by way of compensation and medical expenses must be credited to any award to Luehr; and

(4) That the United States is entitled to full indemnity from Jones Stevedoring Company with respect to any award made in favor of appellee Luehr.

Dated, San Francisco, California,
May 29, 1953.

LLOYD H. BURKE,
United States Attorney,
KEITH R. FERGUSON,
Special Assistant to the Attorney General,
J. STEWART HARRISON,
Attorney, Department of Justice,
Attorneys for Appellant.